

### AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions, and listings, of claims in this application:

#### Listing of claims

1-5 (cancelled)

6. (currently amended) A carton for packaging one or more articles having a laterally extending flange, the carton comprising:

a top wall panel<sub>i</sub> [[,]]

a side wall panel connected to the top wall panel<sub>i</sub> and

an article retention structure comprising:

a tab formed at least in part from the side wall panel, the tab including an upper edge for engaging the underside of the flange the tab comprising:

an upper edge defined at least in part by a first cut line, the upper edge for engaging the underside of the flange; and

an opposing lower edge defined at least in part by first and second fold lines, wherein the minimum distance between the top wall panel and the upper edge of the tab is less than the thickness of the flange to cause the tab to be pivoted with respect to the adjacent side wall panel. ; and

a slit for receiving at least a portion of the flange, the slit being defined at least in part by the first cut line, and the slit having a width that is less than a thickness of the flange so as to cause the tab to pivot outwardly about said first

and second fold lines with respect to the adjacent side wall panel when at least a portion of the flange is received in the slit;

wherein said first and second fold lines are arranged such that when the tab is pivoted outwardly the tab bows outwardly and the region of the adjacent side wall below the lower edge of the tab bows inwardly.

7. (original) A carton according to claim 6 wherein the first and second fold lines are mutually divergent towards the upper edge of the tab.
8. (original) A carton according to claim 6 wherein the upper edge is substantially aligned with a third fold line interconnecting the top panel with the side panel.
9. (cancelled)
10. (original) A carton according to claim 6 wherein the upper edge is offset from a third fold line interconnecting the top panel with the side panel.
- 11-12 (cancelled)

13. (currently amended) A carton for packaging one or more articles having a laterally extending flange, the carton comprising:

a top wall panel;

a side wall panel connected to the top wall panel; and

an article retention structure comprising:

a tab formed at least in part from the side wall panel, the tab comprising:

an upper edge defined at least in part by a first cut line, the upper edge for engaging the underside of the flange; and ~~A carton according to claim 6 wherein~~

a cut line that is provided intermediate the first and second fold lines; and

a slit for receiving at least a portion of the flange, the slit being defined at least in part by the first cut line and the slit having a width that is less than the thickness of the flange so as to cause the tab to pivot outwardly about the first and second fold lines with respect to the adjacent side wall panel when at least a portion of the flange is received in the slit.

14. (cancelled)

15. (original) A carton according to claim 6 wherein a further fold line extends from the upper edge to one of the first and second fold lines.

16. (cancelled)

17. (original) A carton according to claim 10 wherein the top wall panel comprises a portion protruding outwardly of the third fold line to protect the article flange.

18-25 (cancelled)

26. (new) A carton according to claim 6 wherein a cut line is provided intermediate the first and second fold lines.

27. (new) A carton according to claim 6 wherein at least one second cut line extends from the top edge of the tab towards the bottom edge of the tab to facilitate the outwardly pivoting motion of the tab.

28. (new) A carton according to claim 6 wherein second and third cut lines extend between the first cut line and a respective one of the first and second fold lines to define opposed side edges of the tab.

29. (new) A carton according to claim 13, wherein the first and second fold lines and the intermediate second cut line are arranged as a continuous curved section.

30. (new) A package, comprising:

one or more articles having a laterally extending flange; and

a carton comprising:

a top wall panel;

a side wall panel connected to the top wall panel; and

an article retention structure comprising:

a tab formed at least in part from the side wall panel, the tab comprising:

an upper edge defined at least in part by a first cut line, the upper edge for engaging the underside of the flange; and

an opposing lower edge defined at least in part by first and second fold lines; and

a slit for receiving at least a portion of the flange, the slit being defined at least in part by the first cut line;

wherein at least a portion of the flange engages the tab so as to cause the tab to pivot outwardly about said first and second fold lines with respect to the adjacent side wall panel as at least a portion of the flange is received in the slit;

wherein the upper edge of the tab engages the underside of the flange to remain pivoted outwardly with respect to the adjacent side wall panel when the flange is received in the slit;

wherein said first and second fold lines are arranged such that when the tab is pivoted outwardly the tab bows outwardly and the region of the adjacent side wall below the lower edge of the tab bows inwardly.

## **REMARKS**

### **I. Introduction**

The application has been carefully reviewed in light of the Office Action dated March 21, 2006. This communication is believed to be a full and complete response to that Office Action. Claims 1-25 were pending in the present application prior to entry of the present amendments. Claims 1-5, 9, 11, 12, 14, 16, 18-23, and 25 have been withdrawn from consideration. By the present Office Action, Claims 6-8, 10, 13, 15, 17, and 24 are rejected.

By the present amendment, Claims 6 and 13 have been amended, Claims 1-5, 9, 11, 12, 14, 16, and 18-25 have been cancelled, and new Claims 26-30 have been submitted for entry. Claims 7, 8, 10, 15, and 17 also remain in the application, and upon entry of the present amendment, Claims 6-8, 10, 13, 15, 17, and 26-30 are present.

Support for these amendments can be found in the original specification, and thus, no new matter has been added. Applicant reserves the right to pursue all original claims in this or other patent applications. Reconsideration and reexamination of the present application is respectfully requested in light of the foregoing amendments and in view of the following remarks, which establish that the pending claims are directed to allowable subject matter.

## **II. SUMMARY OF THE AMENDMENTS**

### ***Priority***

The Examiner has indicated that in order to claim foreign priority based on GB 0102074.2, the first paragraph of the specification must be updated to reflect that intention, and that certified copies of GB 0102074.2 and PCT/US02/02385 are required.

### ***In the Specification***

The Examiner has indicated that the abstract of the disclosure is objected to because of use of the legal phraseology. The abstract has been amended to remove the legal phraseology.

### ***In the Claims***

Claims 6 and 13 have been amended. Claim 24 has been cancelled. Claims 26-30 have been added.

## **III. CLAIM REJECTIONS**

### ***Under 35 U.S.C. § 112***

The Examiner has rejected claims 6-8, 10, 13, 15, 17, and 24 under 35 U.S.C. § 112, second paragraph, as indefinite and confusing. The Examiner states that it is unclear what is meant in claims 6 and 24 when referring to "the minimum distance between the top wall panel and the upper edge of the tab is less than the thickness of the flange." The Examiner has also indicated that it is unclear how the distance causes the tab to pivot with respect to the side wall.

Claims 6 and 13 have been amended to clarify the relationship between the top wall panel, the upper edge of the tab, and the flange. Support for these amendments can be found in the specification on at least page 8 lines 16-26, page 9 lines 23-29, and page 10 lines 1-6. Claim 24 has been cancelled and thus the rejection of this claim is considered moot.

***Under 35 U.S.C. § 102***

The Examiner has rejected claims 6-8, 10, 13, 15, 17, and 24 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,201,412 to ***Schuster et al.*** (hereinafter referred to as ***Schuster***). Claim 24 has been cancelled and thus the rejection of this claim is considered moot.

***Schuster fails to disclose all the limitations of amended Claim 6***

The Examiner states that ***Schuster*** discloses a carton comprising a top wall panel (FIG. 2, reference number 14), a side wall panel (46) connected to the top wall panel, and an article retention structure comprising a tab (trapezoidal structures in between fold lines 58) formed at least in part from the side wall panel, the tab including an upper edge (c-shaped protrusion 52) for engaging the underside of the flange and an opposing lower edge (fold line 40) defined at least in part by first and second fold lines (58), wherein the minimum distance between the top wall panel and the upper edge of the tab is less than the thickness of the flange to cause the tab to be pivoted with respect to the adjacent side wall panel.

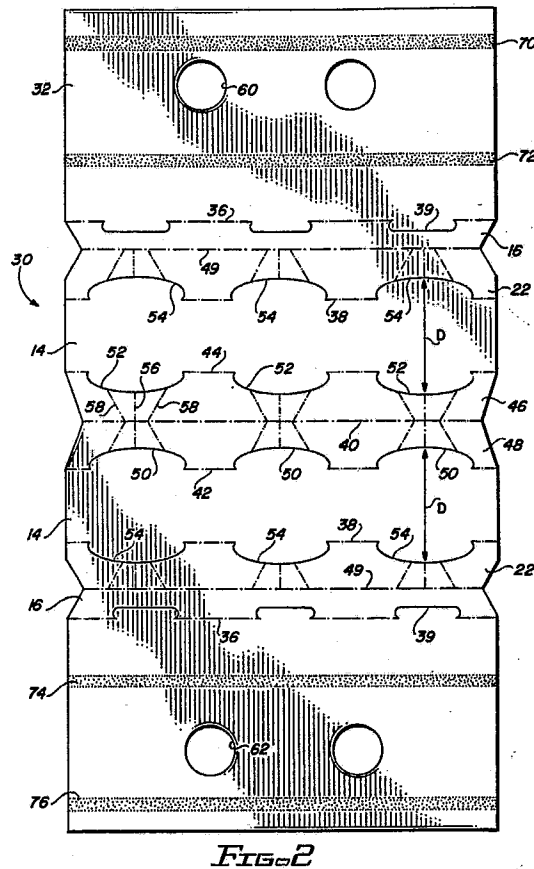


Independent Claim 6 has been amended to recite, in part:

slit having a width that is less than a thickness of the flange ***so as to cause the tab to pivot outwardly about said first and second fold lines with respect to the adjacent side wall panel when at least a portion of the flange is received in the slit***, wherein said first and second fold lines are arranged such that ***when the tab is pivoted outwardly the tab bows outwardly and the region of the adjacent side wall below the lower edge of the tab bows inwardly***.

Emphasis added.

Support for amended Claim 6 can be found in at least FIG. 5 and page 10 lines 8-16. **Schuster** fails to disclose at least the features of amended Claim 6 that are emphasized in bold italics. The trapezoidal structures (between the score lines 58) that are disclosed in **Schuster** are unable to pivot outwardly with respect to the central reinforcing rib sections 46 since the trapezoidal structures are not separable from the central reinforcing rib sections 46. Further, even if the trapezoidal structures are thought to pivot outwardly, the central reinforcing rib sections 46 disclosed in **Schuster** do not include a region below the fold line 40 that would bow inwardly. For convenience, FIG. 1 of **Schuster** is produced below. For at least these reasons, amended Claim 6 and the claims which depend therefrom are patentable over the cited art.



**Schuster fails to disclose all the limitations of amended Claim 13**

Claim 13 has been rewritten as an independent claim to include the features of original Claim 6. Claim 13 is further amended in order to overcome the rejection thereto under 35 U.S.C. § 112. Regarding the rejection of Claim 13 under 35 U.S.C. § 102(b), applicant respectfully traverses this rejection and requests reconsideration and withdrawal thereof.

The Examiner states that, with respect to Claim 13, **Schuster** discloses that a cut line (column 3, lines 50-52) is provided intermediate the first and second fold lines (58). In column 3 lines 50-52, **Schuster** discloses that "the fold lines 40, 49 and 36 may be in

the form of skip-cut lines to facilitate folding the blank along these lines during formation of the carrier."

A claim is anticipated only if "[t]he identical invention [is] shown in as complete detail as is contained in the [presented] claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, at 1236 (Fed. Cir. 1989). Indeed, "[e]very element of the claimed invention must be literally present, arranged as in the claim." *Perkin-Elmer Corp.*, 732 F.2d 888, at 894 (Fed. Cir. 1984).

Claim 13, as amended only to overcome the rejection under Section 112, recites in part:

a tab formed at least in part from the side wall panel, the tab comprising:  
an upper edge defined at least in part by a first cut line, the upper edge  
for engaging the underside of the flange; and ***a cut line that is provided  
intermediate the first and second fold lines.***

Emphasis added.

**Schuster** fails to disclose at least the features of amended Claim 13 that are emphasized in bold italics. Rather, **Schuster** discloses that the fold line 40, a segment of which extends between score lines 58, may be in the form of a skip-cut line. A cut line and a skip cut line are not equivalent. **Schuster** discloses that the function of skip-cut lines is to facilitate folding the blank 30 along the fold line 40. Were the fold line 40 a cut line, the reinforcing rib sections 46, 48 would not be connected. For at least these reasons, Claim 13 is patentable over the cited art. Furthermore, Claim 29 depends from Claim 13, and is patentable for the same reasons as well as on its own merit.

***Prior art made of record but not relied upon***

The examiner has stated that U.S. Patent No. 5,094,347 to **Schuster** and U.S. Patent No. 5,611,431 to **Harris** are considered pertinent to the applicant's disclosure. Neither of these references includes every element as arranged in amended Claim 6 or amended Claim 13. Thus, Claims 6 and 13 are patentable over the prior art made of record but not relied upon. In addition, Claims 7, 8, 10, 15, 17, which depend from Claim 6 are patentable over these references as well as a matter of law.

**IV. CONCLUSION**

For at least the above reasons, Applicant respectfully requests allowance of the claims pending in this case and issuance of a patent containing these claims in due course. Should Examiner Pollicoff believe that a telephone conference would be useful to resolve any concerns and move this application to allowance, Examiner Pollicoff is respectfully requested to contact the undersigned at the telephone number listed below. Otherwise, Applicant respectfully requests timely issuance of a Notice of Allowance for the present application.

Respectfully submitted,

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Attorney Docket No.: D-7870